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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,338	10/15/2001	James Woods	2428-CIP	4630

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DONN K. HARMS  
PATENT & TRADEMARK LAW CENTER  
SUITE 100  
12702 VIA CORTINA  
DEL MAR, CA 92014

EXAMINER

VALENZA, JOSEPH E

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 03/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/978,338

Applicant(s)

WOODS, JAMES

Examiner

Joseph Valenza

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2003.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3-6, 9-12, 15, 17, 18 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7, 8, 13, 14, 16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. Claim 22 has been renumbered in accordance with 37 C.F.R. 1.126 to be claim 21 because no claim 21 had been filed.

2. Claims 3-6, 9-12, 15, 17, 18 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

These claims have been withdrawn because figure 6, like figure 1, does not disclose that hopper 12 is pivotally mounted by pistons 36 as in figure 3. Note that figures 1 and 6 show a spout on the sidewall that has a bend above the spout and do not show the pivot mounting 46 or the hopper pivoting pistons 36 or the flat hopper wall shown in figure 3.

3. Claims 1 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Pierce et al.

Note conveyor 24 has an adjustable end. With regard to claim 13, note adjustment means 33.

4. Claims 2, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce et al in view of Oury.

It would have been obvious that conveyor 24 of Pierce et al could have been telescopic itself like telescopic conveyor UC and LC of Oury instead of telescopic relative to frame 25 of Pierce et al. With regard to claims 14 and 16, note adjustment means 33 of Pierce et al.

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5. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce et al in view of McWhorter.

It would have been obvious to add the teachings of stream splitting means 1 and 10 of McWhorter to the end of conveyor 24 of Pierce et al. With regard to claim 19, note adjustment means 33 of Pierce et al.

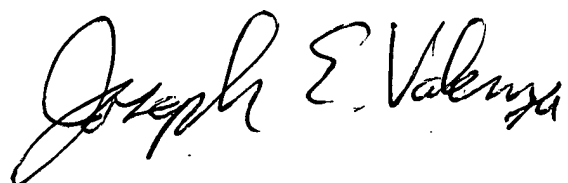
6. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce et al in view of McWhorter and Oury.

It would have been obvious that conveyor 24 of Pierce et al could have been telescopic itself like telescopic conveyor UC and LC of Oury instead of telescopic relative to frame 25 of Pierce et al. With regard to claim 20, note adjustment means 33 of Pierce et al.

7. Claim 16 is rejected under 35 U.S.C. 112 as being redundant of claim 14.

8. Claims 1, 2, 7, 8, 13, 14, 16, 19 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-10 of U.S. Patent No. 6,302,257. Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ in obvious variations of breadth and scope.

9. Any inquiry concerning this communication should be directed to Joseph E. Valenza at telephone number (703) 308-2577. Amendments may be faxed to 703-305-7687. My normal workweek is Monday through Thursday.



JOSEPH E. VALENZA  
PRIMARY EXAMINER